

STATE OF MICHIGAN
COURT OF APPEALS

WINGER CONCRETE PRODUCTS, INC.,

Plaintiff/Counter Defendant-
Appellee,

v

DONALD MILDREN and FLORENCE
MILDREN,

Defendants/Counter Plaintiffs-
Appellants.

UNPUBLISHED

May 26, 2005

No. 254511

Gogebic Circuit Court

LC No. 03-000246-CH

Before: Murray, P.J., and O'Connell and Donofrio, JJ.

PER CURIAM.

In this property dispute, defendants appeal as of right from the trial court's judgment quieting title to a disputed driveway and granting both plaintiff and defendants an easement for use of the driveway. We affirm.

The property at issue is a concrete driveway that borders defendants' property on the north and plaintiff's property on the south. The driveway was installed by Ruppe Concrete, plaintiff's predecessor in title, and provides access to both the buildings on plaintiff's property and a gravel driveway that leads to defendants' home. Neither party has another driveway that can be used to access their property. Both parcels of land are bordered on the west by a local roadway, to which the driveway at issue connects.

Defendants first argue, in essence, that the trial court erred in determining the parties' credibility. After carefully considering the lower court record, we do not believe there is anything in that record to indicate that this Court should abandon the traditional deference given to the factfinder in determining credibility. *Mogle v Scriver*, 241 Mich App 192, 201; 614 NW2d 696 (2000). The trial court was aware of the differences between the parties' positions and was free to accept plaintiff's version of events and reject defendants' version. We decline to interfere with and cannot find error with the trial court's determinations regarding issues of credibility.

Defendants next argue that the trial court should not have granted plaintiff a prescriptive easement over the concrete driveway. We disagree. Actions to quiet title are equitable in nature and are reviewed de novo. *Beulah Hoagland Appleton Qualified Personal Residence Trust v*

Emmet Co Rd Comm, 236 Mich App 546, 550; 600 NW2d 698 (1999). The trial court's findings of fact are reviewed for clear error. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000). A finding is clearly erroneous when "the reviewing court on the entire record is left with the definite and firm conviction that a mistake has been committed." *Id.*

The trial court actually concluded that both plaintiff and defendants had acquired a prescriptive easement over the other's respective properties. A prescriptive easement is established when a party shows use of another's property that is open, notorious, adverse, and continuous for a period of fifteen years. *Higgins Lake Property Owners Ass'n v Gerrish Twp*, 255 Mich App 83, 118; 662 NW2d 387 (2003). The use of the driveway by both plaintiff and defendants was clearly open, notorious, and continuous from 1974 to the present, a time period that is well beyond the requisite fifteen years. Thus, resolution of this issue turns on whether plaintiff's use of the driveway was adverse. "Adverse or hostile use is use inconsistent with the right of the owner, without permission asked or given, use such as would entitle the owner to a cause of action against the intruder." *Mumrow v Riddle*, 67 Mich App 693, 698; 242 NW2d 489 (1976). "[P]ermissive use of property, regardless of the length of the use, will not result in an easement by prescription." *West Michigan Dock and Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995).

The record establishes that both parties used the driveway under a claim of right. There was evidence that Ruppe Concrete had a permissive agreement with defendants' predecessor in title and defendants for use of the driveway. Specifically, the agreement apparently called for Ruppe to maintain the driveway in exchange for the right to use it. However, this type of oral license "is automatically revoked upon transfer of title by either the licensor or licensee." *Kitchen v Kitchen*, 465 Mich 654, 658-659; 641 NW2d 245 (2002). Although the evidence showed that plaintiff continued to maintain the driveway when it acquired the property, there was no evidence presented that this was done as a result of an agreement between plaintiff and defendants regarding permissive use of the driveway. Therefore, when title transferred to plaintiff, any agreement about the use of the driveway was revoked, plaintiff's use of the driveway was no longer with permission, and plaintiff's use of the driveway was adverse. Therefore, the trial court did not err in finding that both parties' use of the property resulted in an easement by prescription.

However, we agree with defendants that the trial court erred in concluding that plaintiff established an easement by necessity. Nonetheless, as this was an alternative ground for granting a right-of-way easement over the driveway, the error was harmless. *Gray v Pann*, 203 Mich App 461, 464; 513 NW2d 154 (1994) ("The fact that the trial court reached the right result for the wrong reason is not grounds to reverse on appeal.").

Defendants also argue that the trial court erred in determining that the parties had acquiesced to a boundary line running down the middle of the driveway. Again, we disagree. When pursuing a claim of acquiescence for the statutory period, there is no need for a party to establish a bona fide controversy over the boundary line. *Sackett v Atyeo*, 217 Mich App 676, 681; 552 NW2d 536 (1996). The party only needs to show that adjoining property owners acquiesced to a boundary line for a period of at least fifteen years. *Killips v Mannisto*, 244 Mich App 256, 260; 624 NW2d 224 (2001). The testimony at trial showed that, until a survey was performed in 2002, both parties and their predecessors in title believed that the boundary line was marked by an iron pin or piece of rebar imbedded in the middle of the driveway. This

monument was treated as marking the boundary line for well over the statutory period of fifteen years. We conclude, therefore, that the trial court did not err in determining that the parties had acquiesced to this line as the boundary line between their properties.

Finally, we decline to address defendants' argument that the trial court erred in not properly considering safety factors when rendering judgment because this argument was not presented to the trial court for resolution or sufficiently briefed and supported on appeal. See *Efesia v Credit Technologies, Inc*, 245 Mich App 466, 471-472; 628 NW2d 577 (2001).

Affirmed.

/s/ Christopher M. Murray

/s/ Peter D. O'Connell

/s/ Pat M. Donofrio